SINGAPORE REPORTS.

EX PARTE YEO POH NEO.

[Orig. Civil Jurisdiction (Jobling, J.) March 11, 1947]

Courts Ordinance (Cap. 10) Section 11 (1) (a)—Rules of the Supreme Court, Order 59, Rule 3—Application for Order of Certiorari to remove and quash order of Rent Assessment Board—Rent paid to original owner and later to applicant in currency notes issued by the Japanese Government until September 1945—Order of Rent Assessment Board fixing rent of premises—Increase of Rent (Restriction) Ordinance, 1939, Sections 4, 6, 7 and 7A.—Order of Rent Assessment Board made in excess of jurisdiction—Whether Courts (Restriction of Civil Jurisdiction) Ordinance 1946 debars the Court from hearing the application.

In this case the applicant made an application for an Order of Certiorari to remove to the Court and to quash (1) an order dated 9th May 1946 made by the Rent Assessment Board fixing the rent of premises at 27, Eng Hoon Street, Singapore on the grounds that the order was made without or in excess of jurisdiction (2) an order dated 21st October 1946 made by the Rent Assessment Board refusing to exercise its powers of revision in regard to its order of 9th May, 1946, on the ground that it, in effect, confirmed the order of 9th May 1946.

The premises were newly erected and completed in 1943 and were first let to the Grand Dentist and Laboratory on an ordinary monthly contractual tenancy created by mutual agreement, at a rental of $550/- a month. In April 1945 the premises were purchased by the applicant subject to the existing tenancy and notice of the change of ownership was served on the tenant. The tenant paid the monthly rental of $550/- first to the original owner and later to the applicant in currency notes issued by the Japanese Government until September 1945. Japanese notes were then by Proclamation No. 4 of 1945 declared to be no longer legal tender and the tenant, on being pressed by the applicant, paid the rent in Malayan Government Currency notes, under protest, and made an application to the Rent Assessment Board for the Board to exercise its powers under the Increase of Rent Restriction Ordinance 1939 and fix the rent of the premises as from 5th September 1945. The application came on for hearing on 2nd May 1946 and, after an adjournment to view the premises, the Board made an order dated 9th May 1946 fixing the rent at $150/- a month from 5th September 1945. Subsequently the landlord (the applicant in this application) made application to the Board for a review of the Order of 9th May 1946 but the Board after hearing counsel for both parties dismissed the application on 21st October 1946.

Held, (1) that the Supreme Court of the Colony has the power to make an order of Certiorari and that the Rent Assessment Board is a tribunal to which such an Order may properly issue;

(2) that the words "suit, action or other proceeding whatsoever" in the Courts (Restriction of Civil Jurisdiction) Ordinance 1946 are not words clear enough to impair this right of the Crown;

(3) that an application for Certiorari, solely directed as it is to keep subordinate tribunals within their jurisdiction, is not a proceeding which can be said to give rise to any "question relating to or involving Japanese currency" within the meaning of that Ordinance;

(4) that by virtue of Section 6 (4) (b) of the Increase of Rent (Restriction) Ordinance 1939 the rent of any premises completed after 1st August 1939 is the rent at which such premises were first let and in such a case the powers of the Rent Assessment Board are restricted to refusing or authorising an increase of rent under Section 7;

(5) that as in this case the Rent Assessment Board was aware that the rent of the premises had been fixed at the first letting, it clearly acted in excess of its jurisdiction in endeavouring to fix another rental for them, and therefore the Order of the 9th May 1946 must be removed to the Court and quashed;

(6) that Certiorari is not a proceeding appropriate to enforcing an exercise of powers and the application so far as the order of 21st October 1946 is concerned is misconceived and must be refused.

Cases referred to :—

(1) *G. H. Slot and Company Ltd. v. The Registrar of Trade Marks* (1939) M.L.J. 205.

(2) *King v. Electricity Commissioners* (1924) 1 K.B. 205.

(3) *Rex v. Port of London Authority, Ex parte Kynock Ltd.* (1919) 1. K.B. 176.

(4) *Rex v. London County Council, Ex parte Swan and Edgar* 141 Law Times Reports 590.

APPLICATION FOR ORDER OF CERTIORARI.

F. A. Briggs for the applicant.

R. C. H. Lim for the respondent.

Jobling, J. :—This is an application for an Order of Certiorari removing to this Court and quashing

(1) an order dated 9th May 1946 made by the Rent Assessment Board fixing the rent of premises at 27, Eng Hoon Street, Singapore;

on the grounds that the order was made without or in excess of jurisdiction and

(2) an order dated 21st October 1946 made by the Rent Assessment Board refusing to exercise its powers of revision in regard to its order of 9th May 1946;

on the ground that it, in effect, confirmed the order of 9th May 1946.

The facts, which are not in dispute, are that certain premises were newly erected and completed in 1943 and first let to the Grand Dentist and Laboratory on an ordinary monthly contractual tenancy created by mutual agreement, at a rental of $550 a month.

In April 1945 the premises were purchased by the applicant subject to the existing tenancy and notice of the change in ownership was served on the tenant.

The tenant paid the monthly rental of $550 first to the original owner and later to the applicant in currency notes issued by the Japanese Government until September 1945. Japanese Government notes were then by Proclamation No. 4 of 1945 declared to be no longer legal tender and the tenant, on being pressed by the applicant, paid the rent in Malayan Government currency notes, under protest, and made application to the Rent Assessment Board for the Board to exercise powers under the Increase of Rent (Restriction) Ordinance 1939 and fix the rent of the premises as from 5th September 1945.

The application came on for hearing on 2nd May 1946 and, after an adjournment to view the premises, the Board made an order dated 9th May fixing the rent at $150 per month from 5th September 1945.

Subsequently the landlord (the applicant in this application) made application to the Board for a review of the order of 9th May 1946 but the Board after hearing counsel for both parties dismissed the application on 21st October 1946.

Before dealing with the issues raised in this application I must first be satisfied that this Court has jurisdiction to hear and determine them. I am satisfied after consideration of Section 11 (1) (a) of the Courts Ordinance (Cap. 10); Order 59 Rule 3 of the Rules of the Supreme Court of England and *G. H. Slot & Company Limited vs. The Registrar of Trade Marks*[1] and the *King vs. Electricity Commissioners*[2] that this Court has the power to make an order of certiorari and that the Rent Assessment Board is a tribunal to which such an order may properly issue.

My attention has however been drawn to the Courts (Restriction of Civil Jurisdiction) Ordinance 1946 (No. 10 of 1946) and a great deal of argument has been addressed to the Court on the question whether this application is a "suit action or other proceeding whatsoever" in which a question relating to or involving Japanese Currency arises or falls to be considered and therefore one that this Court is debarred from entertaining by Section 2 of that Ordinance. In *Rex vs. Port of London Authority, Ex parte Kynoch Ltd.*[3] and in *Rex vs. London County Council Ex parte Swan & Edgar*[4] it has been held that the words "action, prosecution, or other proceeding" in the Public Authorities Protection Act 1893 do not extend to certiorari and in the former case Scrutton L.J. said :—

> As to the Public Authorities Protection Act 1893 the writ of mandamus, like that of certiorari and prohibition, is a high prerogative writ and a very valuable right in the Crown for keeping subordinate tribunals within their jurisdiction. Clear words are necessary to impair such a right and the words of the Act "action, prosecution or other proceeding against any person" are no such clear words as to have that effect.

In my view the words "suit action or other proceeding whatsoever" in the Courts (Restriction of Civil Jurisdiction) Ordinance 1946 are also not such clear words as are necessary to impair this right of the Crown. I would add that it also seems clear that an application for certiorari, solely directed as it is to keeping subordinate tribunals within their jurisdiction, is not a proceeding which can be said to give rise to any "question relating to or involving Japanese currency" within the meaning of the ordinance. Any other construction would lead to an absurd situation as it would enable the fact that the subordinate tribunal had acted in excess of jurisdiction to be urged as a good ground for this Court refusing to interfere.

I am therefore satisfied that this Court may properly entertain the application for removal of the Rent Assessment Board's orders of 9th May and 21st October 1946 to this Court.

Different considerations apply to each of these orders and they must be dealt with separately.

As regards the order of 9th May 1946, this was made after hearing Counsel but no evidence was taken and the note of the proceedings is meagre. It is however clear that the Board was made aware of the essential facts as the note of the proceedings opens with the following statement by Counsel for the tenant (the applicant before the Board) namely :—

> The house was completed in November 1943 and let to Applicant at $550/- Japanese Currency. The rent was paid till August 1945. On the re-occupation Respondent claims $550/- but applicant refused.

The Rent Assessment Board was established by the Increase of Rent (Restriction) Ordinance 1939 and its powers as regards the determination of rent are contained in Section 6, particularly subsection (4) (b), (c) and (d), and Section 7. It was at first contended for the Respondent that Section 7 subsection (1) and (4) gave the Board a general power to fix rents but subsequently this argument was dropped. It is quite clear that the only powers given to the Board by Section 7 are those contained in subsections (2) and

(3) which enable the Board to refuse to make an order or to make one of the orders contemplated by Section 6 (1) relating to an increase in rent. Paragraphs (c) and (d) of Section 6 (4) do not apply to the circumstances of this case and the only provision appropriate to the facts appears to be section 6 (4) (b). This provision reads as follows :—

> For the purposes of this Ordinance, the rent at which premises, completed after the first day of August 1939 are first let shall be such rent as, in the absence of agreement, may be fixed by the Board.

The provision therefore applies to premises which, as in this case, were completed after the first day of August 1939 and provides two things, namely : —

(1) that in the absence of agreement the rent at which such premises shall be first let shall be such as is fixed by the Board and;

(2) that where there is an agreement regarding rent at the first letting the rent of such premises shall be the rental agreed upon in that agreement;

(1) is expressly provided whereas (2) is implied.

But the implication is clear. Section 6 (4) is directed to defining the term "rent" for the purposes of the Ordinance and where any application is made for an increase in the rent of premises completed after 1st August 1939 the rent to be increased will be that fixed for the premises, by agreement or by the Board as the case may be, at the first letting thereof.

For the purposes of the Ordinance therefore the rent of any premises completed after 1st August 1939 is the rent at which such premises are first let.

Mr. Lim for the respondent pressed, and indeed principally relied upon, the argument that Proclamation No. 4 of 1945 declaring Japanese Government notes no longer legal tender made the performance of the agreement impossible and so determined it.

It is however not necessary to consider the matters involved in this contention as once it has been ascertained that the rent of premises completed after 1st August 1939 was fixed at the first letting that rent is the Statutory rent of those permises until the Board authorises an increase. It is entirely immaterial whether the agreement, where the rent is fixed by agreement, remains in force or is determined.

It is not disputed that the premises at 27, Eng Hoon Street were completed after 1st August 1939 and that, when first let, the rent was fixed by agreement.

The rent of these premises for the purposes of the Increase of Rent (Restriction) Ordinance 1939 is therefore the rent fixed by that agreement and the Assessment Board's powers in respect of those premises are restricted to refusing or authorising an increase of rent under Section 7. That was the position on 2nd May 1946 when the application for the rent of the premises to be fixed came before the Rent Assessment Board.

It is not necessary to consider whether the proceedings were barred by the Courts (Restriction of Civil Jurisdiction) Ordinance 1946 as the only question the Board had to ask itself when the matter came up for hearing was had the rent been fixed at the first letting and the answer to that question would have shown whether or not it had jurisdiction to go further into the matter.

The Board were aware that the rent of these premises had been fixed at the first letting and in endeavouring to fix another rental for them clearly acted in excess of its jurisdiction.

As regards the order of 21st October 1946, this is an order under Section 7A of the Increase of Rent (Restriction) Ordinance 1939 which gives the Board "full powers of rehearing, reconsideration and revision in any case arising under this Ordinance, in which it thinks fit to exercise such powers . . ."

In this case the Board thought fit to rehear and reconsider the matter upon which it had made an order on 9th May 1946 but did not think fit to exercise its powers of revision. The refusal to revise its previous order is said to amount to a confirmation of that order. Be that as it may the fact is that the Board in accordance with its judicial discretion as provided in the Ordinance refused to exercise its powers. It is not necessary to consider whether or not the Board was debarred by the Courts (Restriction of Civil Jurisdiction) Ordinance 1946 from rehearing and reconsidering the matter as it refused to exercise its powers thereon. Certiorari is not a proceeding appropriate to enforcing an exercise of powers and the application so far as the order of 21st October 1946 is concerned is misconceived and must be refused. This is of no practical importance as the refusal to revise makes the order of 9th May 1946 the only valid and effectual order and its correction, if made in excess of jurisdiction, an adequate remedy.

For the reasons I have already given I think the Rent Assessment Board acted in excess of its jurisdiction when making the Order of 9th May 1946 and therefore I direct that that Order be removed to this Court and quashed.

Order Accordingly.